1948.

File No. O Electricity
Legal Department

A **BRANCH**

Subject:— Opinions Under the

P=106

Indian Electricity Act 191

107-A

File No. O · Electricity/48

C-O N T E N T S .

Legal Department File No. 0.Electricity -/ 1948.

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C O N T E N T S .

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18.	10441 /6/11/48/	Sec. 7-A - Indian Elec. (Bom. Amend) Act, 1946 -sec. 3 - whether Govt. can appoint the Municipality as its agent to take possession of and run the undertaking , pending completion of the purchase of the undertaking.	101-106.

Submitted.

2. As desired by M/S. Little & Coy. the Solrs. to Government, the papers were forwarded tho the Advocate General for necessary action.

3. The opinion of the Advocate General was forwarded by this Deptt. to P.W.D. for furhterr action,

4. Now the Solicitorrs to Government state that the Advocate General in his opinion dated the 3rd July 1947, whilst agreeing with the opinion expressed by them under NO. N.V./ 5867 dated 28th May 1947 , does not make any mention of the draft of the proposed order endored with their said note . The Solrs. to Government presume that the said draft order was placed before the Advocate General and was approved by him. As the papers were submitted to the Advocate General through the R.L.A. , P.W.D. has requested to R.L.A. to state whether the presumption of the Solr. to Govt. is correct .

5. This Deptt. had forwarded all the papers of the case including the draft order at p. 15, to the A.G. for settling the draft order as desired by the Solicitors to Government. However as this Deptt. is unable to state whether the draft order at p. 45 was scrutinised by A.G. or not, the A.G. may be requested u.o. to state whether he has approved the draft order at p- 15.

Id/-M.G.P.
dt/-16/10/

A.S.S. It is desirable to obtain conformation of the Adv. General that the draft order is appeared by him.

Id/-G.R.D.
dt/-16/10/

R.L.A. A may be done

Id/-R.T.K.
dt/-17/10/

RL.A. Id/-P.K.L.
dt/-24/10/

V.VK. 25/5/56/ 50

Office of the R.L.A.

As desired by the Solicitors to Government (page 3 ante) the Advocate General is requested to state whether the draft of the proposed order (page 15) settled by the Solicitors to Government has been approved by him.

Sd/- F.M.L.
dt/- 31/11/40/47/
Remembrancer of Legal Affairs.

H.R. to the Advocate General No. 10480
dated the 1st November 1947.

V.VK. 25/5/58/ 5C.

No. 2 of 1948.

Advocate General's Chambers,
High Court,
Bombay , 5th January 1948.

U.O.R. to the Advocate General of Bombay,
No. 1048 dated the 1st November 1947.

I have seen the draft at page 15 of the file, and I approve of it as being correct.

Sd/-

Advocate General.

Legal Department.

A copy of the Advocate General's opinion No. 2 dated the 5th January 1948 is forwarded herewith.

Id/- P.M.L.
dt/- 13/1/

Remembrancer of Legal Affairs.

U.O. to P.W.D. , No. 366 , , dated the 12th January 1948.

V.VK. 25/5/58/ 50.

Submitted .

2. Mr. N.P.Uplap made an application for an electric license for Kurudwadi in 1939. In accordance with sec. 3(2)(a) of the Indian Electricity Act, 1910, he published a notice of his application and followed the procedure laid down in chapter III of Indian Electricity Rules, 1937. Government on its part considered all objections received in thematter as required by sec 3(2)(a)(i) In 1940 the draft license was revised by Government and was forwarded to Mr. Uplap enquiring whether he is willing to accept it in that for,. He accepted the draft license and deposited the sum of Rs. 2000/- being the 20% of theestimated cost of theschemo. But as Mr. Uplap was not in a position to secure the machinery required for the scheme due to the conditions created by he war the matter was not proceeded with and hewas asked to approach Governmentagain when he was ina position to marry out the works. The deposit of Rs. 2000/- was therefore returned to him In October 1946 he again applied for the license stating that the would place order for machinery as soon as a lecense is granted to him. P.W.D. now states that a period of about 10 years has since elapsed and as he circumstances have changed it would be necessary for he applicant to follow fresh the procedure laid down in chapter III of the I.E. Rules and consider again the objections that might now be received in this connection from local authorities . The Electrical Engineer to Government is of the view that the lapse of subsequent period of ten years in the grant of a license cannot be considered in the absense of any provision to that effect,as a vital defect necessitating the observance of the detailed procedure again by mr. Uplap. The R.L.A. isrequested in thematter.

Under subsec.(1) of sec. 3 of the Indian Electricity Act, 1910 the Provincial Government on application made in the prescribed for and on payment of theprescribed sed (if any), grant to any person a license. Before the license is granted the person has to publishe a notice of his applicati on in the prescribed manner and with the prescribed particulars as stated in clause (a) of sub-sec . (2). Then the Provincial Government considers objections, if any, received from certain army departments and local authority. Mr. Uplap in the present case has publisheda a notice of his application and followed the procedur laid down in chapter III of the Indian Electricity Rules, 1937. Government has also considered all objections recieved in the matter as required by sec. 3(2)(a)(i) of theAct. Mr. Uplaphad also accepted all conditions of the draft lecense and had deposited the sum of Rs. 2000/- as security for discharging the duties and obligations imposed upin him. It will thus be seen that Mr. Uplap has followed the procedure laid down in the Indian Electricity Act and therules, made thereunder in applying for thelicense and thematter had come to the stage of granting thelicense. It is true that due to the abnormal conditi nw of the war and the difficulties felt by him in securing thenecessary machinery for the scheme Government postponed the question of the grant of the license to him by nearly 10 years. But this is no ground for compelling him to follow the whole procedure de-novo which might result in additional expenditure to him. If Government considers that in view of the lapse of a period of 10 years fresh conditions in the draft license should be added, they may do so and obtain his consent thereto. But onreceiving an intimation from him that he is willing toaccept a license in the form approved by the Government it will not

Office of the R.L.A.

pplicati-on for
license .
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ndian Electricity
ct, 1910
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ndian Electricity
ules, 1937.

The view taken by the Electrical Engineer to Government is correct. Rule 11(2) of the Indian Electricity Rules, 1937, provides :

> "If the application for a license is rejected, or if a licence is revoked under section 4(3) as to the whole or any part of the area of supply , the Provincial Government may ay its discretion refund, wholly or in part the fee referred to in clause (g) of sub-rule (1) of rule 11."

In the present case the applicant deposited a fee of Rs. 250/- and that fee has not been refunded to him. Prima facie it indicates that his application for license was not rejected. Government's communication dated 12th August 1941 does not amount to the rejection of his application but only to the postponement of consideration of his application for grant of a license when he has secured the plant and machinery required for the scheme. There is no provisions either in the Indian Electricity Act or the Rules made thereunder empowering Government to treat an application as rejected when it is not granted within a certain period. In the circumstances there appears no objection to proceeding with the pending application for the grant of a license in the present case. However in view of the lapse of time it appears desirable to proceed with the application on the footing that is made afresh now so that the procedure regarding advertisement of the application (which must presumably be on the basis of the new form) may be gone through to the advantage of the public.

Id/- P.M.L.

Embrancer of Legal Affairs.

U.R. to P.W.D. No. 252 , dated the 9th January 1948.

V.VK. 25/5/56/ 50.

Submitted.

2. It appears that in order to provide shade for travellers, the District Local Board, Kaira entered into a contract with Mr. D.J.Trivedi and three others to plant trees beside the Dakor-Umreth road on certain terms, in the year 1932. The Dakor-Umreth Electric License 1940, was granted to one Mr .B.D.Desai on the 1st March 1940. The area of supply and compulsory supply under the li cense (clauses 4 and 5) is the Municpal districts ~~xxxxxxxx~~ of Dakor and Umreth and shown ingreen coloured line in maps A and B & C bel Between these two municipal districtsis a road called Dakor-Umreth road as is shown in red in map A, and on this road a transmission (H.T.) line connecting the two towns is also shown and the licensee is allowed to transmit energy from Umreth to Dakor under clause 9 of the license-The President of the D.L.B. Kaira in his letter at p. 79, and theD.M. Kaira in his letter a t pp-85-87, and state that the licensee did not follo w the procedure under s ection 13(1) of theIndian Electricity Act when he placed the transmissions line and that the licensee did not act according to the later agreement between him and the D.L.B. The Electrical Engineer to Government at p- 9 ante,states that when the licensee commenced the erection of poles on this road the owner of the trees (Mr, D.J.Trivedi andothers) wrote to the D.L.B.Kaira and the D.M.Kaira to consult themwhen fixing the position of the poles. The licensee then approached the D .M. for permission to cut some of the trees , and D.M.ordered the Resident Magistrate Anand to enquire into the matter and fix the number of trees to be cut and also the necessary compensation to the owners. The R.M. Anand accordingly on 30-1-1946 ordered that 66 trees be cut and fixed the compensation under section 18(4) of the Indian Electricity Act, 1910. But before the Resident Magistrate ordered the trees to be cut

the licensee had cut off 21 trees including 66 fruit bearing trees on the noght of 24th January 1946. The tree planters thereupon requested the D.M. Kaira todirect the company for removal of the poles and to fix full compensation under section 12(2) of the Indian Electricy Act. The P.W.D. in consultation with the R.L.A. (vide his opinion No. 5664 dated 15. 8. 1946 at pe.35 ante) ordered the D.M. to direct theResident Magistrate to hear both the parties and revise if necessary his order giving the compensation. The R.M. Anand consequently revised his order on 17-5-1945. Mr. D.J.Trivedi was not being satisfied by therevised order appealed to theD.M. (vide his letter dated 3-8-1947). The D.M.however informe d him in his letterat p. 161 ante, that the case now falls under section 19(2) of the Indian Electricity Act and he may thereforeapproach Government directly under section 52. may therefore approach Government for arbitration under section 52. (vide his letter at p. 171 ante) . The Electrical Engineer to Government to whom the papers were forwarded states (p. 175 ante) as follows :

"The map 'A' which shows the route of the transmission line, may be forwarded to the District Magistrate and it may be pointed out to him that the clause 9(b) of the Dakor-Umreth Electric License, 1940 , confers on thelicensee the power to lay down or place electric transmission line along that route and that this power is to be exercised i n accordance with the Indian Electricity Act, 1910 , and Rules thereunder as amplified by the same clause . Incase, therefore the company has laid the poles, which form the subject matter of thedispute, in defeasance of the provisions of Section12(2) of theIndian Electricity Act, it will apparently afford a good ground for the District Magistrate to decide the case under the - iso th section12(2) of the Act." and pro- e appointed an arbitrator in the matter.

the Dakor-Umreth Road as it belongs
dedicated to public use and
on 12(2) cannot be taken , and
circumstances it will not...

not be correct to ask the D.M. to decide the case under Sec. 12(2) of the Act. There seems no other provision in the Act under which Govt. can compel the licensee to alter the position of the poles in the circumstances of the case and the only remedy seems to be for the Muny. to institute a civil suit against the licensee for the breach of the agreement and get the poles removed. The only thing which Govt. can do under the Act is perhaps to prosecute the licensee for breach of the provisions of Sec. 13(1) of the Act. Vide Sec. 47 thereof. " The licensee has been informed (p.105 ante) to alter the present position of the poles to save the trees in question.

3. The R.L.A. is requested to advise as to what action Government, the Municipality, and the trees growers can take to compel the licensee to alter and refix the poles, and the lines as agreed between him and the D.L.B. Kaira.

Under clause 5 of the Dakor-Umreth Electric License 1940, the area of supply is the Dakor Town and the Umreth Town as shown in the map A below. Under clause 9(b) thereof for the purpose of conveying and transmitting energy from Umreth to Dakor the licensee may in accordance with the Act and the Rules lay down or place electric Transmission lines outside the area of supply along route as shown by a red line in map A. This is the Dakor Umreth Road. Consequently the licensee is authorised to lay transmission lines along this road. Section 12(1) of the Indian Electricity Act, 1910, interalia empowers a licensee subject to the terms and conditions of his license to lay down and place electric supply-lines and other works and do all other acts necessary for the due supply of energy without the area of supply. Sub-sections (2) and (3) of this section limit the power of licensee to slay down or place electric supply line in the case of land (i) not dedicated to public use or (ii) a street not repairable by the Central or Provincial Government

local authority or any railway or tramway without the written concent of the person concerned or the Provincial Government. Thereforein case of the Dakor-Umreth Road the licensee was authorised to lay down and place electric supplu line. Where in exercise of any of the powers of a licenseein relation to the execution of any owrks involves the placing of any works in under or over along or across any street etc. it is incumbent in the licensee to giwe one month's notice under section 13(1)(a) to the person responsible for the repair of the street, in this case the D.L.B. Kaira. Where the licensee, makes a default in complying with any of these provisions he shall make full compensation for any loss or damage incurred by reason thereof and where any difference or dispute arises as to the amount of compensation the matter shall be determined by arbitration (section 13(2)). Clause XVII to the Schedule provides that on the day ne xf preceding the commencement of any works as are referred to in section 13 a notice in writing to the Electrical Inspector stating that he is about to commence work. It would therefore appear that the licensee can be prosecuted under section 47 of theAct for breach of the provisions of section 13(1). There is no provision in the Act under which theliaensee may be compelled to remove the supply lines as in thecase of ariel lines 18(2) and consequently the licensee cannot be forced to remove them from thetrees planted on the road side. However in view of the statutory notice to the local authority under section 13(1) required to be given by the licensee and its agreement to fix the poles in aparticular method it would be for the D.L.B. to go to a Civil Court for relief.

Sd/-T.Y.Ch
dt/-2/1/48/

A.A.S.

The facts are stated in para. 2 of Mr. Chaudhari's note. The advise of the R.L.A. is sought on the points referred to in paras. 3 and 6 of theP.W.D. office note dated

Compensation for damage done by aerial lines.

Indian Electricity Act, 1910.

The view taken by the P.E.A. on both points is correct. Since the award of compensation passed by the Resident Magistrate is not acceptable to the local authority, the matter will have to be determined by arbitration under section 19(1) of the Indian Electricity Act, 1910. Government may, therefore, appoint an Arbitrator under section 52 for determining the proper compensation.

Since the road on which the electric transmission line was placed, being a road vested in the local authority, is deemed to be dedicated to public use. It is also repairable by the local authority. Consequent neither sub-section (2) nor sub-section (5) of section 18 would be applicable. Section 18(1) does not appear to have been, therefor, contravened. As the licensee failed to comply with the provisions of section 13(1) he would be liable to pay full compensation for any loss or damage incurred by reason thereof, and where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration (See sub-section (2) of section 13). The licensee can also be prosecuted for he contravention of section 13(1), but he shall not be punishable if the Court is of the opinion that the case was one of emergency and that the offender complied with said provisions as far as was reasonable in the circumstnc (See section 47 and the proviso thereto). It is presum that there has been no breach of the provisions of section 18(1) and the powers of removal cannot be exercised by the Provincial Govenment. It does not therefore appear feasible to force the licensee to

move the poles away from the trees planted on the road side, but the prospective damage to the trees by prebinting their growth or otherwise may naturally be included in the claim, for compensation which willbe made the subject matter of arbitration.

Id/- P.M.L.
dt/- 12/1/

Remembrancer of Legal Affairs

U.R. to P.W.D. No. 385 ,dated the
13th January 1948.

V.VK. 26/5/56/ 5C.

Submitted.

The Government of Madras who have acquired the Madras Electric Supply Corporation Ltd. and have to pay compensation under sec. 7 of the Indian Electricity Act, 1910 , have requested this Government to clarify, if a similar question has arisen in this Province, as to whether the ownership of service lines paid for by the consumers vests in the licensee so as to entitle it for payment of the value of such service lines.

2. The Advocate General of India it appears had informed the Madras Government in 1943 that the licensee is the owner of the service lines in all cases and the property in it never vests in the requisitionist whether he pays for it or not

3. It appears that the Madras Government has been advised by the Advocate General of Madras, who was appraised of the opinion of the Advocate General of India, as above, that such portion of service lines, the cost of which has been paid for by the consumers cannot be treated as being vested in the licensee so as to entitle it to legitimately claim to be the owner thereof. He has pointed out that the duty of maintenance of the service lines as provided in clause 6 of the Schedule to the Act implies and connotes that the ownership is not in the licensee because it is unnecessary and unmeaning to provide statutorily that an owner shoul maintain his own property. The P.W.D. on this case states as follows:-

"As far back as 1924 the G. of I. has informed this Government that they were advised that a service line (including the portion paid for by the consumer) is the property of the licensee and this

advice was conveyed to the several electrical licensees in this Province by G.R. No. 5365, dated the 2-10-1924.

By G.R. No. 9872/27, dated the 5-5-36, Govt. sanctioned a model form of conditions of supply, etc, for adoption by various licensees to regulate their relations with their consumers,.The following note is made below clause 4 in that form:-

> "NOTE.- The service line, notwithstanding that a portion of the cost has been paid for by the consumer shall remain the property of the licensee by whom it is to be maintained. "

The above note has been empodied in the conditions and miscellaneous charges for the supply of energy by the miscellaneous charges for the supply of engrgy by the B.E.S. & T. Coy. sanctioned by Government in its G.R. No. 2028/36, dated the 1/7/39/.

Service lines form part of the licansee's "Works" as defined in sec. 2(4) of the Act. Under section 7 of the Act the value of "Works " has to be paid to the licensee when the undertaking is purchased .

From above , it seems that the B.E.S.& T. Coy. wil l have to be paid by the Municipal Corporation for the service lines the cost of which has been paid for by the consumers."

The R.L.A. is requested to advise.

4. Any service line laid for the purpose of supply in pursuance of a requisitaan under sub-clause (1) of clause VI in the Schedule to the Indian Electricity Act, 1910 , shall notwithstanding that a portion of it may have been paid for by the person making the requisition, the maintained by th e licensee. Messrs. Gangadhariah and Ferro in their book "Electrical Law and Practice in India and Burma" (p.21) observe as follows:-

> "The question then arises whether the licensee can recover from the said future consumers the whole or part of the cost of the service line whose const to the extent mentioned in clause VI(1) 1st proviso of the Sechedule to the ACt has already been recovered from the consumer first connected to the distributin main, There have been cases where the first consumer has very strongly protested against the use by others of the service line originally intended for him. On the other hand the licensee can contend and has in fact actually contended in certain cases that, as the service line has to be maintained by himself

V.VK. V.VK. 26/5/56/

Office of the R.L.A.

Ownership of supply line paid for by consumer.

Indian Electiricity Act, 1910.

B om.Second Appeal No. 181 of 1942.

Attention of the Public Works Department is invited to the Bombay High Court decision in Second Appeal No. 181 of 1942 (Bhagwandas Dahyabhai and another vs. The Nadiad Electric Co. , Ltd. Nadiad) wher the question is full y considered.

Id/-P.M.L.
dt/- 30/1/

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 57 Confl., dated the 2nd February 1948

V.VK. 26/5/50/ 50.

Submitted.

The Tata Power Co. Ltd. in their letter dated the 4th Nov. 1946, wrote to Govt. stating that Central Electric Power Control Board have conveyed their sanction to the supply of electrical energy being made available by the Tata Power Co. Ltd. to the following consumers viz. (1) Bombay Chlorin Products Ltd. (2) Premier Automobiles Ltd. (3) The Standard Batteries Ltd. and (4) The Godrej and Boyce Manufacturing Co. Ltd. and as these factories came within the area of supply of the Distributing licensee- The Bombay Suburban Electric Supply Ltd. they requested Govt. as required by the Proviso to the First Annexture to the Nila-Mula Valley (Hydro-Electric) License, 1921 , to give their written consent to the supply of electricity being made available to these consumers by them (vide p. 1 ante)

Govt. consulted the Bombay Suburban Electric Supply Ltd. and in their letters dated the 4th Dec. 1946 and 24th Dec. 1946, the Company informed Govt. that they were not sure whether the consumption of the two factories out of the four mentioned by Tata Power Co., would exceed 5, 00, 000/- units per year and unless details were made available to them toassess the proposal they would be unable toagree. The company further stated as follows:-

"There is another point which we have to raise in connection with these proposed supplies. Although we have no specific information it seems to us probable that the Tata Power Co . would wish to provide the supply required by the three of the above mentioned factories by connections of theoverhead line which feeds this company's Receiving Station at Santa-Cruz. If this is actually the case, we wish to draw your attention to the fact that this overhead line has been designed and installed primirily to provide the essential stand-by capacity of 6000 KVA to the bulk supply to thecompany from Messrs. Andgra - Valley Power Supply Company. It is , therefore, a

matter of importance to this company that this stand-by capacity shall not be reduced by reason of any additional loads which may be connected to this line, and we would welcome an assurance from the Tata Power Company on this point".

The points raised by the Bombay Subrrban Electric Supply Co. have been considered by Govt . in P.W.D. calling for a report of the Electrical Engineer (p. 29)and by consulting the Tata Power Co. (p.27). On the information madee available Govt. have come to the conclusion that there is no objection to grant the requisite sanction. In this connection the Under Secretary, P.W.D. statesthat if such sanction is going to lead to a breach of the conditions of agreement between the Co. and the Andhra Vally Power Supply Co. Ltd (vide B.S. Elec. Co's letter at pp. 49-50 ante), the matter is for the two companies to settle between themselves and Govt. is not responsible for it. The R.L.A. is requested to confirm the view (pp. 55-56).

A similar point is cndidered in R.L.A.'s opinion No. 2646, dated the 5th April 1945. Attention of P.W.D. may be invited to that opinion.

Sd/-S.G.R.
dt/-8/1/

A.A.S. The agreement between the BombaySuberban Electric Supply , Ltd and the Tata Power Coy. as is now on record. If, however, thase is a condition in such agreement that " The Stand-by capacity of the overhead transmission line Servicing the Bom.Subarban (The receiving Station of the Electric Supply Ltd at Santa-Cruz should not be reduced in any way" , and the Supply of energy to in Premier Automobiles and the Standard Batteries rivolves a branch of that condition , The B.S. S.S. may have a ~~xxxxxx~~ a cause of action against the Tata Power Coy. but not against Govts. (cf.R.L.A.'s No. 2646 of 5-4-1945).
Reply may be :-
"Seen and returned ."
The new expressed by the U.S. to P.W.D. in this note dt.1/11/47/ is correct (of R.L.A.'s opinion No. 2646 / of 5/4/1945/ I agree Reply may be as at A

R.L.R. Id/-G.R.D.
dt/- 28/1/

V.VK. 26/5/56/ SC.

Office of the R.L.A.

Sanction to supply electricity.

R.L.A.'s No. 2646, dated 5-4-1945.

Seen and returned.

The view expressed by the Under Secy., P.W.D. in his notedated 1-11-47 is correct (cf. R.L.A.'s opinion No. 2646 , dated 5-4-1945).

Id/- P.M.L.
dt/- 30/1/

Remembrancer of Legal Affairs.

U.R. to P.W.D. No., 1086 , dated the 2nd February 1948.

V.VK. 26/6/56/ 5C.

Submitted

2. The facts of the case are as follows :-

In 1939 Mr. B.D. Desai applied to Government to gtant him a license under the Indian Electricity Act, 1910 to supply electrical energy to the town of Borsad. But as Mr. Desai did not deposit the sum if Rs. 10, 000 (as require under P.W.D. letter No. 3441/36-M, dated the 16th April 1941) and for other conditions arising out of the war (such as non-availability of machinery) Government decided in 1941 not to proceed with his application. As aresult of much correspondence between Mr. Desai and Government the former was informed in P.W.D. letter No. 344/36-M, dated the 27th August 1941 that Govt. would accept a reduced deposit of Rs. 5,000/- and grant the license to him on his showin to the satisfaction of the Electrical Engineer to Govt. that he had purchased all the plant and machinery required for the supply of electrical energy at Borsad. In view of this Mr. Desai paid the said amount and secured a part of the machinery required for the undertaking. But in august 1942 in view of the instructions received from the Government of India that licenses should ordinarily be refused, the question arose as to whether the license should be granted to Mr. Desai. The R.L.A. who was requested to opine on this question in his opinion No. 7326 dated the 12th September 1942 opined :

"Government's conditional promise toggrant a license was made a year ago. No time limit was prescribed for the fulfiment of the conditions. Normally a year would seem ample for the purchase

of the necessary plant and machinery. But in the present conditions of the war perhaps a longer time is required. So far Mr. Desai has not asked for further time to complete his purchases. His contention is that he has purchased sufficient machinery . But that would not prevent him from contending in Court that he has not been given sufficient time in the abnormal conditions of the war to obtain the necessary machin ery. There is no doubt that Government's promisse has involved him in the purchase of some machinery. In these circumstances , it is doubtful whether the result of litigation would be in Government's favour and it seems adviseable to grant Mr. Desai a suspended license or to arrive at some amicable agreement with him".

The P.W.D. thereafter with the consent of the Government of India, Department of labour proceeded o grant Mr. B.D.Desai 'suspended' license subject to certain conditions. But while the conditions were finalised by the P.W.D. in consultation with the Electrical Engineer to Govt. and the special officer (Electric Grid) the D.M.Kaira in his letter No. P.O.L. 875 , dated the 20th May 1947 has stressed that the license should not be given Mr. Desai and has requested Govt. that the Borsad Municipality which has also applied for a licence may be permitted to supply electric energy to Borsad. In the P.W.D. note at pp. 229-30 ante it is stated that :

"It seems from the remarks of the D.M.Kaira, that Mr. Desai is not in a position to fulfil his obligations under the I.E.Act,. The Commissioner

Thexfxmmixixxxx H.D. endorsees the views of the D.M. The question therefore, for consideration is whether t in view of all this Govt. can now refuse the grant of the Borsad license to Mr. Desai without entailing undue legal liability. The H.L.A.'s advice may be sought on this point in view of the changed circumstances mentioned above".

The Electrical Egineer to whom these papers were referred also agrees with the D.M.Kaira and concludes "such a person (Mr. Desai) is not in my opinion likely to observe obligations placed on him by the Indian Electricity Act, and is not likely to make use of thelicense in the best interest of the public. "

3. The question for H.L.A.'s consideration is whether in the circumstances stated Government will entail undue legal liability in refusing the proposed Borsad Electric License to Mr. Desai. In the present case however the proceedings have gone beyond the state of mere inquiry and publication of Mr.Desai's application . The conditional promise to grant a license was made in Government letter P.W.D.No. 3461/36-M , dated the 27th Aug. 1941 and as stated in H.L.A.'s opinion No. 7336 , dated the 12th September 1942 Government's promise has involved Mr. Desai in the purchase of some machinery and it is doubtful whether the result of litigation would be in Government's favour.

4. The point upon which the D.M.Kaira the Commr. H.D. the Electrical Engineer to Government stress for refusing the license to Mr. Desai is that - Mr. Desai is not a person who will fulfil the

obligations placed upon him under the Indian Electricity Act if and when the license is granted to him. The point therefore for consideration is whether Goct. is bound to fulfil the conditional promise to Mr. Desai in spite of the fact that Govt. is in knowlegge of the facts that Mr. Desai will not fulfil the obligations under tl Indian Electricity Act if placed upon him.

5. As stated above Govt. have descreation under section 3 of the Indian Electricity Act to grant a license and the power to grant a licesne must contain a power to refuse one if that be deemee expedient (1944 I.L.R.Mad. 448 at p. 454). If Govt. has sufficient information that if Mr. Desai is granted the license he will misuse it or would not use in the interest of the public it would be deemed expedient to refuse the license. But in view of the expenses which Mr. Desai has incurred in pursuance of Govt.'s promise, it cannot be stated what view the Court will take. In these circumstances, the following two courses deserve attention.

(1) That Govt. should grant the license to Mr. Desai and if thefears expressed by the D.M. Kaira, Commr. N.D. and Electrical Engineer to Govt. come true the license may be revoked . Govt. has ample powers under sec. 4 of the Electricity Act to revoke the license after its grant if the licensee is not in a position fully and efficiently to discharge his duties and obligations. (R.L.A.'s opinion No. 1070, dated 4.2.1941) and ((2) That while granting the

Indian Electricity Act, 1910, Grant of licence to Mr. Desai of Borsad.

It is true that by letter dated the 27th August 1941, Mr. Balvantbhai Dadubhai was informed that Government would accept a reduced amount of Rs. 5'000/- as deposit and grant the licence to him on his showing to the satisfaction of the Electrical Engineer to Government that he has purchased all the plant and machinery required for the scheme. But this communicatio would not amount to any bidding and enforceable agreement requiring Governmen t to issue licence to Mr. Desai even on his showing satisfactorily that he has purchased all the plant and machinery required for the scheme. Under section 3 sub-section (1) of the Indian Electricity Act, 1910, absolute discreation vests in the Government to grant or refuse a licence to the applicant. In exercising this discreation, Government will have to consider whether the applicant is suitable and has enough resources to carry ou the undertaking. Before the aforesaid communication was issued in 1941, Government had no definite information about the unsuitability of Mr. Desai for holding a licence It has now transpired that his management of another electric concern has been far from satisfactory and that he is a men of quarrelsome nature and is in the habit of taking law into his own hands. Further, he has been convicted and sentenced to fine for the breach of Electricity Rules. Apparently such a man cannot be considered suitable for the grant of a licence under the Indian Electricity Act, for the interests of the public, which the Act contemplates to safeguard, would be jeopardised. As stated above it is entirely within the discretion of Government to grant or refuse a licence. In the circumstances, there appears no objection to refusing the application of Mr. Desai for the licence, and Governme

...a not be liable ...

however, Government may fortify themselves ... opinion of the Advocate General as the party being quarrelsome is likely to take thematter to Court .

d/- L.M.L.
dt/- 29/4/

Remembrancer of Legal Affairs.

U.R. to P.W.D: No. 11451 , dated the 1st December 1947.

V.VK. 26/5/56/ 50.

Office of the R.L.A.

STATEMENT OF THE CASE FOR OPINION.

By Government letter, Public Works Department No. 3441/36 dated the 27th August 1941 Mr. B.D. Desai, and applicant for an electrical license was informed that Government would accept a reduced deposit of Rs. 8,000 and grant the license to him on his showing to the satisfaction of the Electrical Engineer to Government that he had purchased all the plant and machinery required for the scheme. Mr. Desai thereafter paid the deposit and secured apart of the machinery required for the undertaking. In November 1941, the Government of India issued instructions to the Provincial Governments that licenses should ordinarily be refused . In view of these instructions the question arose whether there would be any "undue legal liability" on Provincial Government if the grant of the license is refused to Mr. Desai and thelicense fee and the deposited amount returned to him.

On these facts the R.L.A. in his opinion No. 7325, dated the 12th September 1942 observed as follows:

> "Government's conditional promise to grant a license was made about a year ago. No time limit was prescribed for the fulfilment of the conditions. Normally a year would seem ample for the purchase of the necessary plant and machinery. But in the present conditions of war perhaps a longer time is required . So far Mr. Desai has not asked for further time to complete his purchases. His contentio is that he has purchased sufficient machinery. But that would not prevent him contending in court that he has not been given sufficient time in the abnormal conditions of thewar to obtain the necessary machinery. There is no doubt that Government's promise has involved him in the purchase of some machinery. In these circumstances, it is doubtful whether the result of litigation would be in Government's favour, and it seems advisable to grant Mr. Desai a suspended license or to arrive at some amicable agreement with him."

Consequently, Government decided in February 1943, with the concent of the Government of India that the suspended license should be granted to Mr. Desai subject to certain conditions, one of those being that the suspended license will not come into operation until three years after termination of thewar. Mr. Desai has now requested Government to grant him the necessary license . However it has now transpired that his management of another electric concern has been far from satisfactor and that he is aman of quarrelsome nature and is in the habit of taking law into his own hands. Further he has been convicted and sentenced to fine for the...

he breach of Electric Rules. In the light of these [illegible]

.L.A. in his opinion No. 11451, dated the 1st December 1947,

bserved as follows:-

> "It is true that by letter dated the 27th August 1941, Mr. Balwantbhai Vadubhai was informed that Government would accept a reduced amount of Rs. 5,000/- as deposit and grant the licence to him on his showing to the satisfaction of the Electrical Engineer to Government that he has purchased all the plant and [illegible] plant and machinery requried [illegible] for the scheme. But this communication would not amount to any binding and enforceable agreement requiring Government to issue licence to Mr. Desai even on his showing satisfactorily that he has purchased all the plant and machinery required for the scheme. Under section 3 sub-section (1) of the Indian Electricity Act, 1910, absolute discreation vests in the Government grant or refuse a licence [illegible] to the applicant. In exercising this discreation, Government will have to consider whether the applicant is suitable and has enough resources to carry on the undertaking. Vofore the afore-said communication was issued in 1941, Government had no definite information about the unsuitablility of Mr. Desai for holding a licence. It has now transpired that his management of another electric concern has been far from satisfactory and that he is a man of quarrelsome nature and is in the habit of taking law into his own hands. Further, he has been convicted and sentenced to fine for the breach of Electricity Rules. Apparently such a man cannot be considered suitable for the grant of licence under the Indian Electricity Act, for the interests of the public, which the Act contemplants to safeguard, would be jeopardized. As stated a ove it is entirely within the discreation of Government to grant or refuse a licen ce. In the circumstances , there appears no objection to refusing the applicantion of Mr. Desai for the licence, and Government would not be liable for damages for such refusal."

As the matter im important and the party is likely to take

t to the Court, the Advocate General is requested to favour

overment with his opinion.

Sd/-P.M.L.

Remembrancer of Legal Affairs.

.R. to the Advocate General ; Bombay No. 13377

Dated the 24th December 1947.

V.VK. 28/5/56/ 5C.

No. 12 of 1948.

Advocate General 's Chambers,
High Court,
Bombay, 9th February 1948.

U.O.S. to the Advocate General of ~~Bombay~~ Bombay
No. 13377 dated the 24 th of December 1947.

O P I N I O N .

Government promised to grant a license to Mr. B.D. Desai involving him in the purchase of plant and machinery. He also made the required deposit . All the formalties have apparently been gone through. (See page 229 of the file.) As Mr. Desai has now requested the grant of the license, I presume that he has acquired all the machinery, and he is it in a position to work the licence Government has exercised its descretion, and it seems to me that there is a valid contract now for the grant of the license for consideration i.e. purchase by Mr. Desai of the machinery and the payment of the deposit.

The subsequent discovery of Mr. Desai unsuitability is, in my opinion, not material. There has been no breach of any condition of this particular license, and the fact that Mr. Desai may have failed to carry out some condition of another license leads to no conclusion that he will not carry out the terms of this license, If Government now refuse; in my opinion, they will lay themselves open to a suit for damages. The discretion has been exercised and Mr.Desai has been ~~kmx~~ made to act to his detriment on Governments promise, to the extent that he has spent money, probably a considerable sum this heading led to do so by Government , Gives him, in my opinion a good cause for damages.

Sd/-
Advocate General.

V.VK. 28/5/56/ SC.

Office of the R.L.A.

A copy of the Advocate General's opinion is forwarded herewith.

M/- P.M.L.
Dt/- 11/12/

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 1534, dated the 13th February 1948.

V.VK. 26/ /56/ 50.

Submitted.

2. The Ahmedabad Electricity Company Ltd., propose to amend clause 6 of the Agreement executed by the Company with the consumers by reducing the period of supply from three years to six months. Electrical Engr. to Govt. condiders that the proposed amendment would not be in order in vie of the provisi ns of cl- VI (1) proviso i(a) of the Schedule to the Indian Electricity Act, 1910. The P.W.D. thinks that the view taken by the Electrical Engr. is correct, The R.L.A. is requested to advise in the matter.

3. Clause (f) of sub-sec.(2) of sec. 3 of the Indian Electricity Act, 1910, provides that the provisions contained in the Schedule shall be deemed to be incorporated with, and to form part, of every license granted under Part II of the Act, save in so far as they are expressly added to varied or excepted by the license, and shall, subject to any such add itions, variations or exceptions which the Provl. Govt. is hereby empowered to make, apply to the undertking authorised by the license. The license granted to the Company has not been forwarded by the P.W.D. But presumably the provisions of the Schedule are to be taken to be incorporated in the license. The first proviso sub-head (a) to cl. VI(1) of the Schedule provides that the licensee shallnot be bound to comply with any such requisition unless and until the person making it, within fourteen days after the service on him by the licensee of a notice in writing in this behalf, tenders to the licensee a written cotract, in in a form approved by the Provl. Govg. duly executed and with sufficient security binding himself to take a supply of energy for not less than two yearw to such amount as will produce at current rates sharged by the licensee, a reasonable return to the licenesee. Sub-sec.(2) of sec. 21 provides that subject to the provisions of sub-sec.(1), a licensee may, with the previous sanction of the Provl. Govt. given after consulting the local authority where the licensee is

not the local authority, make conditions not inconsistent with this, Act, to regulate his relations with persons who are or intend to become consumers, and ma with the like sanction given after the like consultation add to or alter or amend any such conditions; and any conditions made be a licensee without such sanction shall be null and vaid. In view of the words "conditions not inconsistent with this Act, or with his license or any sules made un er this Act, to regulate his relations with" in sec. 21(2), it appears, that the licensee cannot insert in hi s agreement with his consumers any condition which is inconsistent with his license. He can insert only such conditions as are consistent w th the Act or his license and to which previous sanction of the Provl. Go vt. is obtained. Subject to these restrictions the legislature has intended the rights between a licensee and a consumer to be regulated by contract (see Malati Bose v. Chairman, Dargeeling Municipality 63 C.L.J. 595 see also Mear's Electricity in India, pp. 82,329. Reduction of the period of supply from three years to six months, proposed by the Ahmedabad Electricity Coy, is incon-sistent with the fresh proviso Sub-head(a) to cl. VI(1) of the Schedule, which is incorporated in the license. Consequently the amendment proposed by the Coy. to the agreement would be ultra vires and unenforceable (cf. John Ernest Edward v. Rai Jogendra Chandra 62 Cal. 856). Th e view taken by the Elec. Engr, to ~~the~~ Govt. is correct.

Sd/-P.S.Nadkarni.
dt/- 10/2/

A.L.R. I agree
Reply may be:-
Seen and returned.

The view taken by the Electrical Engine er to Govt. is correct. (The proposed amendement of Cl. 6 at the agreement would be altra -vires the provisions of sub-Cl (a) of Cl. V(1) at the Schedule to the Indian Electricity Act, 1910, in as mucch as it provides no ~~mix~~ liability to take an gharantee the supply of engrgy for not less their two years).

Id/-R.T.K,
dt/- 19/2

U.R. to P.W.D. No. 1954 of 27/-2-1948.

V.VK. 28/5/56/. 5C.

Submitted;

2. The facts of the caseare as follows:-

By a agreement dated 5-3-1941 entered in the between the Savda Municipality and the Savda-Fazpur Electric Supply Company, Ltd. the letter was agreed to supply to the said Municipality and the Municipality agreed to take entirely the electric supply from the company subject to the terms and conditions mentioned therein. On 11-3-1943 Government issued order, No, 6041/36 EL (amended by order of an even number dated 1-4-1943) to compensat licensees for the general increase in the cost of production of electric energy and chiefly for the cost of disel oil owing the conditions arising out of war. In G.L. No. 6041/36 -EL. dated 29th September 1943, Govt. clarified the intention underlying theorder of 11- 3-1943.

From the letter of the President of the Savda Municipality the facts of the case appear as follows :-

A dispute arose between the Municipality and the Electric Co. from 30-4-1943 on account of payment of the surcharge payable to the Company under the orders above states and minimum charges as specified in clause 6 of the agreement. On 24-9-1945 the Company discounnected the supply but reconnected the supply on 28-9-1945 when the Municipality deposited a sum of Rs. 2473 -3-6 with the District Magistrate, East, Khandesh ,as demanded by the Company. Thereafter the D. M. East Khandesh called therepresentatives of the Municipality and the Company in a meeting and it was decided that the Company should charge surcharge on actual maintenance cost. The

...d to mention the actual maintenance
...nd refused to accept the cheque sent by
he Municipality as the charges did not include
surcharge on pole rental. The Company gave notice
to the Municipality claiming surcharge on pole
ental and demanding minimum charges. The Municipality
efused to pay surcharge on pole rental and at last
n 18-5-1946 the Company disconnected the supply
nder section 24 of the Indian Electricity Act,
910. The Company has also filed a suit for rs. 5900/-
gainst the Municipality in the Civil Court, Senior
vision at Jalgaon for surcharges amount of energy
nsumption , for pole rental and minimum charges.

Under these circumstances the D.M. East Khandesh
proposeds to issue an order under rule 81(2) of the
fence of India Rules read with section 4(ii) of the
ergency Provisions Continuance Ordinance, 1946
X of 1946) directing the Company to continue street
ghting within the limits of the Savda Municipality.

The P.W.D. condiders that the D.M. East Khandesh
annot legally issue the order since the Emergency
ovisions (continuance) Ordinance 1946 expired on
-3-1947 and has referred the papers to the R.L.A.
a question whether the Company can be forced to
store lights under any provision of law.

3. Rule 81 of the Defence of India Rules along
ith certain other rules as amended was continued
ter expiration of the said Rules by the Emergency
ovisions(continuance) Ordinance, 1946 . But the
dnance has expired on 24-3-1947, and along with
Ordinance rule 81 of the Defence of India Rules
continued in force also expired (cf. R.L.A.'s opinion
. 6887 dated 4-7-1947). The order sought to be
e by the D.M. East Khandesh under rule 81 read with
tion 4 of the Emergency Provisions (Continuance)
Ordinance,

V.VK. 28/8/56/ 50.

Ordinance, 1945 , Khere:fore cannot be le:ally made . he view expressed by the P.W.D. is correct.

5. The Indian Electricity Act, 1910 does not contain any provision under which Government may take power to direct a licensee to restore the supply of energy. When the suppl: has been cut off by the licensee for non-payment of charges of energy under the purported exercise xhxxxxxxfxxxxxxxxxxxof his power under section 24 of the Act. Neither the Indian Electricity (Bombay Amendment) Act, 1946, the Bombay Electricity(Surcharge) Act, 1946, and the Bombay lect**-city (Emergency Powers) Act, 1946, which a re recent legislations on the subject are helpful in the matter ,Section 24 of the Indian Electricity Act, 1910, empowers the licensee, after giving not less than seven clear days notice in writing to the consumer who neglects to pay any charge for energy or any sum due from him to the licensee, and without prejudice to his right to recover such charge or other sum by suit, to cut off the supply and to dis continue this supply until such charge or other sum is paid. But this power to cut off supply conferred by this section should be exercised ingood faith and reasonably (John Earnest Edward v Jogendrachandra Ghosh (1935). I. L.R. 62 Cal. 986). It then is for the Municipality to show malafides and unreasonableness on the part of the Electric Company. Under clause 10 of the agreement between the Company and the Municipality the Company has specifically forgone its right to cut off the supply for non-payment of the charges for the supply of energy and has satisfied itself wi h interest at 9% per annum on the same till payment, and under clause 14 thereof any dispute between the Company and the

dispute arising out of the agreement are to be referred to arbitration. And the present dispute could have been settled by arbitration. But these are matters which the Municipality is to look after. Under the law at it at present stands Govt. has no power to ask the company to restore lights.

Sd/- P.Y.C.
dt/- 15/x

A.S.

As Rule 81 of the D. of I. Rules ceased to continue in force along with the Emergency Provisions (Continuance) Ordinace, 1946 , which expired on 24th March 1947, the D.M. East Khandesh, cannot issue the proposed Order. There appears no provision of law under which the Savda -Faizpur Electric Supply Coy. can be compelled to reconnect the supply of electrical energy ~~ex~~ to the ~~xxxxxxxxxxxxxxx~~ Faizpur Municipality Except indications in Sec. 44(1) of the Indian Electricity Act, 1910 , There is nopther remedy for r restoring Supply .

P Id/-P.B.
dt/- 28/10

A.L.R. Pl. pub a copy of the lience issued to the Savda - Faizpur Electric Company Ltd.

Id/-R.T.K.
dt/- 29-10

Office

Submitted with the copy of Svda-Faizpur Electric Lecense, 1939 (slip A in P.W.D. file No. 2676/36-I of 1938-40 informally obtained from the P.W.D.)

Id/-
dt/- 4/11/

A.A.S. Id/-S.R.D.
dt/- 4/11/

A.L.R. See sub-clause (3) of Cl. VI read the agreement . was not the Company liable to refer the matter to aalrtibution .Since .....

V.VK. 28/5/56/ 5C.

Office of the R.L.A.

lian Electricity
, 1910 .

Seen and returned.

ia Kaizpur Electric
ense.

The viewtaken by the Public Works Department in para-
graph 3 of its office note at pages 67-68 ante is correct.
toration of supply.

Id/- P.M.L.
dt/- 8/1/

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 251 , dated the 9th January 1948

V.VK. 26/5/66/ 60.

Submitted.

2. The Nadiad Electric Supply Company Ltd. requested Govt. to restrict all motive power consumers from using the energy between the hours of 6 P.M. and 10 P.M. The Electical Engr. to Govt. states that this is necessary in the interest of the plant and to avoid any probable breakdown due to over-loading. But he is of the view that this can be done by any executive order. The P.W.D. considers that Govt. can issue an order under sec. 3 of the Com. Electricity (Emergency Powers) Act, 1946, on each consumer concerned restricting his hours of supply rathe than by executive orders. The Electrical Engr. states that the order under sec. 3 is not apparently to be served oneach consumer but a copy of such order is to be served on the licensee. The M.L.A. is requested to advise in the matter.

3. Section 3 of the Com. Electricity (Emergency Powers) Act, 1946, provides that notwithstanding anything contined in any contract or agreement, the Provl. Govt. may by an order in writing require any consumer to, and thereupon such consumer shall, reduce his consump ion of electrical engergy to such extent and in such manner and by such means as may be specified in theorder. The Provl. Govt. shall serve a copy of the order on the licensee supplying the energy. The word "any" may have one of several meanings, according to the circumstance, it may mean "all" "each" "every" "some" or "one or more" out of several " (Iyer's Law Lexicon, p. 872). It appears therefore that Govt. can pass a general order under sec. 3 restricting themotive power consumers from using the energy between the houts of 6 P.M. and 10 P.M. But sec. 12 of the Act provides that every order of direction made or issudd under this Act shall, as far as may be, be served in the manner prescribed in sec. 53 of the Indian Electricity Act, 1910. Sub-sec. 53(1((d) of the Indian Electricity Act, 1910, provide s that every notice, order or document by or under this Act required or authorised to be addressed to any person may be served by post or left where any other person is the addressee,

...son. although therefore a general order under sec. 3 of the Indian Electricity (Emergency Powers) Act, 1946m can be passed by the Govt. it is necessary that in view of the specific provisions made in sec. 12 read with sec. 53 of the Indian Electricity Act, the same should be served on each of the consumers and a copy of the same may be served on the licensee, namely, the Nadiad Electric Supply Coy. as required by the provisions of section 3. The view taken by P.W.D. is correct.

Sd/-P.S.Nadkarni
dt/- 18/2/

A.A.S.

(The opinion referred to P.W.D. at p. 117 is No. 7515, dated, 1-11-1946, this could not be put up as the searchers are unable to trace out the life Even a to by conflict the traced by there).

V.VK. 28/5/56/ 5C.

Office of the N.L.A.

Whether a general order can be passed under section 3 of the Bombay Electricity (E.P.) Act, 1946.

The view taken by thePublic Works Department is correct. Section 3 of theBombay Electricity (Emergency Powers) Act, 1946 , does not contemplate a general order. A separate order will have to be issued in respect of each consumer and served on him(see section 12).

Id/- P.M.L.
dt/- 7/4/

U.R. to P.W.D. , No. 3440 , dated the 9th April 1948.

V.VK. 28/5/56/ 58.

Submitted.

The Amalgamated Electric Company (Belgaum)Ltd. Belgaum Branch to whom the Belgaum Electric License, 1932, was assigned by the original grantees are it appears also supplying electricity to Shahapur (in Sangli State) and Vadgaon (in Kurundwad Junior State). These two towns are not included in the area of supply specified in cl. 5 of the Belegaum electric License, However, Shahapur appears in the map deposited with Government showing the area of supply, under rule 21 of the Indian Electricity Rules, 1937. The Electrical Engr. to Govt. who was asked toreport etc Govt. in connections with certain complaints made against the Co. considers that (p. 41, para. 2) Shahpur is with n the area of supply as shown in the deposited map while Wadagaon is outside the area of supply , but both these places are, however, in the State territories and presumably no action can be taken by Govt. as the Indian Electricity Act, 1910, does not extend to the Indian States. Since the area of supply specified in cl. 5 of thelicense and theone specified in the deposited map are not equibalent the P.W.D. has refe red the pp. to the R.L.A. on the question whether the plan or the license should be considered more authoritative .

Shahpur (Sangli State) is outside (British) India as envisaged in sec. 1(2) of the Indian Electricity Act, 1910. and as such the said Act has no application in respect thereof. From pages 119-120 of the P.W.D. file No. 3203/27 of 1929-34 and particularly the remarks of the Electrical Engr. to Govt. it appears that Govt. has carefully examinded the deposited map. map. The presence of Shahapur in the deposited map appears to be an accidental mistake. However, such presence in the map. (i.e. within the brown line) cannot be construed as empowering the licensee to any rights under the Act in connection therewith as much as it cannot be construed as empowering Govt. to grant a license in respect thereof. The question whether the deposited map or the license is more authoritative does not ther fore arise.

The question for R.L.A.'s consideratic is whether under clause of the Belgaum Electric License, 1932 granted Govt. Shahapur and Vadgaon, which are within the State territories of Sangli and Kurundwad, are included within the "area of supply".

Under subsection (1) of section 3 of the Indian Electricity Act, 1910 , the Provincial Government may, on application madein the prescribed form and on payment of the prescribed fee, if any, grant to any person licence to suply engergy in any area etc.
Under cl. (b) of section 2, "area of supply" means the area within which alone a licensee is for the time ebeing authorised by his licence to supply enger gy . Rule 21 of the Indian Electricity Rules, 1937, provides that when a licence has been granted, a map showing, as regards such licence, the particulars specified in cl. (b) of sub-rule (1) of rule 11 shall be signed and dated to correspond with the dated of the notification of the grant of the licance, by such officer as the Prov. Govt. may disignate in this bahalf and retained by him as the deposited map. Under sub-clause (4) of clause 3 of the Belgaum lectric Licence, the expression "deposited map" macans the plan of the area of supply hereinafter specified, which is deposited with Govt. in pursuan ce of the rules, which plan is signed for the purpose of identification by the Jt. Secretary to the Govt. of Bombay in theP.W.D. and by the licensee under the name and style of the Belgaum Eletricity ompany . Under clause 5 of thesaid License, the area within which the supply of electrical engrgy is authorizes by this licence is thearea specified below and shown as bounded by a brown line. he areas specifyed are :-

(1) the whole area comprised within theMunicipal limits of Belgaum, shown as surrounded bye a Green colour line on the deposited map;

(2) thearea within the limits of the antonment of Belgaum including Civil lines shown as

urrennded.....

V.VK. 28/5/56/ 5C.

Office of the R.L.A.

As a rule the area of supply as specified in the license must tally with the area shown in the map and in case of any divergence the former must prevail as the terms of the license are binding between Government and the licensee. However, this question does not appear to be important in the present case as the administration of the Deccan States including Sangli and Kurundwad (Jr.) States has been taken over by the Provincial Government since 8th March 1948. From the licen e granted by the Sangli State to Messrs. The Belgaum Electricity Company, Ltd. Bombay (pp.81-82 ante) it appears that the Indian Electricity Act, 1910., was adopted by the State and was presumably in force therein immediately before 8-3-1948. In virtue of the provisions of para 4 of the Administration of Deccan States Order., 1948, the Indian Ele tricity Act continues to remain in force in the Sangli State and therefore the license already granted by the State under the Act would remain valid.

2. As regards the map supply of electrical energy to Vadgaon, the papers do not contain any license granted by the Kurundwad (Jr.) State to the licensee, but from the letter of the Dewan of Kurundwad at p. 93 ante, it appers that the Indian Electricity Act, 1910, was introduced into the State and was presumably in force in the State immediately before 8-3-1948. If any license was granted by the State to the licensee under that Act, it would no doubt remain valid. If, however no such license has been granted, it would be open to the Provincial Government under the

proviso to para 4 of the Administration of Decean States Order, 1948 , read with the Act to grant to the licensee a license in accordance with the provisions of the Act, as in force in the State.

Id/-P.M.L.
dt/- 12/49

Remembrancer of Legal Affairs

U.R. to P.W.D. No. 3615 , dated the 14th April 194

(Pl. see R.L.A.'s opinion No. 6491 Dated 13/6/49

V.VK. 28/5/56/

5C.

Office of the R.L.A.

itration in the
pute between the
bay Electric
ply Co. and the
le-Andheri Muni-
ality regarding
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ian Electricity
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ion 52, clause
of the Schdule.

In his opinion No. 5828, dated 4th June 1947 the R.L.A. observed :-

> "Under clause 12, theprice to be charged by the licensee and to be paid to him for energy supplied for the public lamps and the mode in which those charges are to be ascertained shall be settled by an agreement between the licensee and theProvincial Government or thelocal authority, as thecase may be, and where any difference or dispute arises, the matter shall be determined by arbitration. Presumably in thecase of public lamps, unlike the lamps used by private consumers, the price is determined not merely on the basis of the energy consumed (the cost of providing theconnection and installation etc. being recovered from the consumer independently) but includes in theprice the elements which the municipality and thecompany have in view, viz. maintence, interest on capital expenditure, depreciation, etc. If that presumption be correct, all these items invitably enter into thecharges; and the mode of ascertaining the charges must necessarily take account of these items. They may otherwise be separaboe elemen's, but as they form thecomponent part of the price charged per unit, they are a fit subject matter of arbitrarion as included in the mode of ascertaining the charges."

Accordingly the Electrical Engineer to Government was requested to proceed with the work of arbitration. The Bombay Suburan Electric Coy. Ltd. in its letter dated 7th January 1948 stated that for the reasons stated in its letter at p. 69 ante, arbitration proceedings in this case would be ultra vires and unauthorised and that it connot deposit the sum of Rs. 180/- as advance paynebt of fees against for arbitration. The Electrical Engineer has requested that the R.L.A. may be consulted as to whether the arbitration work may be started in the absence of the supply company.

2. Since it is decided to proceed with the

arbitration it appears that the presump ion made in R.L.A.'s opinion No, 5823 , dated 4th June 1947 that in the case of public lamps the price is determined not merely on the basis of the energy consumed byt includes in the price maintance, interest on capital expenditure, depreciation etc., is correct. The view taken in R.L.A.'s opinion No. 5823 , dated 4th June 1947 is also supported by the decision in Municipality of Bulaways V. Bulaways (1908) A.C. 241. In this case certain electric supply undertakers agreed to provide street lamps in and to light a certain streets, and the local authority agreed to pay " at such rated as will yield to the contractors a return equal to 10 per cent. over the actual cost of generating thelight. " It was held, that "generating light " covered all operation leading upto the protection of the light in th e street lam ps, including yransmission of the currest, and that the 'actul cost ' covered all that the production of the light const, including depreciation of plant, rent, rates taxes, and insurance.

8. Under clause XII of the Schedule to the Indian Electricity Act, 1910 the price to be charged by the licensee and to be paid to him for energy supplyed for the public lamps, and themode in which these charges are to be ascertained, are to be settled between the licensee and the Provl. Govt. or the local authority, as the case may be, and, whete any difference or dis ute arises, the matter shall be determined by arbitration. Section 52 provides that where any matter is, by or under this Act, directed to be determined by arbitration, the matter shall unless it is other wise expressly provided in the license of a licensee, be

determined by such person as the Provincial Government may nominate in that behalf on the application of either party, but in all other respects the arbitration shall be subject to the provisions of the Indian Arbitration Act, 1899. Section 46 of the Arbitration Act, 1940, provides that the provisions of the Act, except sub-section (1) of section 6 and sections 7,12, 36 and 37, shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Act is inconsistent with that other enactment or with any rules made thereunder. Under section 47, and subject to the provisions of section 46, and save in so far as it otherwise provided by the any law for the time being in force, the provisions of this Act shall apply to all arbitrations and to all proceedings uthereunder.- The powers of the arbitrators are specified in section 1 3. Section 42 provides for service of notice by party or arbitrator.

4. As observed by Wadia J in Pratapsingh Vs. Kishan Prashad Co. (33 Bom. L.R. p. 1357 at p. 1361), "It is a well-known principle of law of arbitration that an enquiry before the arbitrator should be assimilated as near as possible to proceedings in a trial in a Court of law, and that there or a party to the arbitration must not only have notice of the time and place of the meeting, but he should be allowed reasonable opportunity of proving his case either by evidence or by arguments or both as, and of being fully heard. The notice must be sufficiently long to give the party that reasonable opportunity if he wants to be heard. If

there is no sufficient notice, there cannot be a proper hearing nor a valid award, it being a well recognised rule of natural justice that a man's legal rights cannot be determined without giving him an opportunity of being heard. In a case in Amir Begum Vs. Sadar-ud-din Hussain (16 Bom. L.R. 423) their Lordships of the Privy Council observed as follows :-

"If irregularities in procedure can be proved which would amount to no proper hearing of the matters in dispute, there would be misconduct sufficient to vitiate the award without any imputation on the honesty or imaprtiality of the arbitrator."

As pointed out in the said ruling (at p. 1363) 'when an arbitrator considers that the time and place fixed by him for the meeting are reqsonable, and if after servic e of notice one of the parties to the arbitration fails to attend beofore him , he is entitled no doubt to proceed with the arbitration ex-parte. But it is still advisable not compulsory, that for him, though it is ~~xxxxxxxxxxxxxx~~ he should give that party notice of his intenition to do so'.

Similar view is expressed by Mookerjee J in Udaichand Panna Lall Vs. Debibux (I.L.R. 47 Cal. 951 at p. 958) wherein he observed :-

"It is advisable to give the notice in writing to each of the parties or their Solicitors, and thenotice should express the arbitrator's intention clearly, other wise the award may be set aside : Whithe V. King, Wood, V. Lake. There is no statutory rule, however, that if an arbitrator proceeds exparte without giving notice of his intention to proceed in that manner, the award made by him must be set aside . In the absence of such an

inflexible statutory provisions, the procedure commended in Gladwin V. Chilcite and the other cases mentioned can be regarded only as a rule of prudence and convenience. As Lord Denman C.J. put it in Scott V. Van Sadau, the law is that if either party, after the arbitrator has given him sufficient notice and proper opportunities of attending willnot appear, the arbitrator will proceed with the reference on a certain day in notice that he will then proceed ex-parte if one of thepartiesabsents himself without sufficient reason etc. "

On theapplication by the Parle-Andheri Municipality, the Government has niminated Mr. S.G.Nadkarni, the Electrical Engineer to Government under section 52 to act as an arbitrator in thedispute on conditions :

(a) that the parties concerned come to Bombayum on a day to be fixed by Mr. Nadkarni;

(b) that each party pays to Government a fee of Rs. 45/- per hour spent by Mr . NakKarni in connection with the work; and

(c) that each party deposits in advance with Government a sufficient sum to be fixed by Mr. Nadkarni for payment of thefees mentioned in (b) above.

It is stated that the Bombay Suburban Electric Company is objecting to the arbitration and is unwilling to deposit the sur of Rs. 180/- as advance payment of fees for artitrationn. Despite the protest made by the Bombay Suburban Electric Supply Co. and con- paymentof advance fee, the Electrical Engineer should give sufficient notice and proper opportunity to the Co. and to the Municiaplity to appear befor him and take part in the proceedings . Even after such a noticeand if the Coy. fails

to attend, it would be advisable for him to give the Company another notice of his intention to proceed with the arbitration ex-parte (33 Bom. L.R. 1357 at p. 1363) If deppute such a notice, the Bombay Suburban Electric Supply Co. fails to attend, there would be no legal objection to the Electrical Engineer hearing the matter ex-parte in the absence of the Co. anddeciding the matter. The refusal of the Company to deposit in advance the costs of arbitration would be no bar to the Electrical Engineer proceedint with thehearing, for in the award he can direct by whom the costs should be borne (See clause 8 of the First Schedule to the Arbitration Act).

Id/- P.M.L.
dt/- 19/5/

U.O. toP.W.D. No. 4792 , dated the 19th May 1948.

V.VK. 29/5/56/ 5C.

Submitted.

2. Please see R.L.A.'s opinion No. 11451 dated 1/12/1947/ and the Advocate General 's opinion No. 12 of 1948. (Pl . also see opinion at slip o ante.)

The Electrical Engineer to Govt. who was asked toreport as to whether:

1. Mr. Desai has acquired all the machinery;
2. He is in a position to work the license; and about
3. the sum he spent over machinery, has now urnished the correspondence in the matter (pp 245-249 ante) .

The Electrical Engineer in his report states that Mr. Desai has not acquired all the machinery required for the purpose and that he has not spent more than Rs. 2000/- in connection therewith including the license fees and furhter considers that it is neither desirable nor in theinterest of the public at Borsad to gtant thelicense to Mr. Desai who has proved incompetent to fulfil the obligations under the I.E. Act. In view of the report of the Electrecal Engineer the P.W.D. has again referred thepapers to the R.L.A. for being referred to the Advocate General for reconsideration of his opinion (No. 12 of 1948.)

3. No new legal point has been raised either for R.L.A.'s or the Advocate General's reconsideration. The P.W.D. could have very well asked the Electrical Engineer to report earlier, that is before the case was referred for opinion to the Advocate General. Even though Mr. Desai has not purchased all the machinery, he is not precluded for m contending that he has done so and since Govt. has exercised its discreation once and he has acted upon it, it gives him a good cause ofaction .

There does not appear any necessity to refer the case to the Advocate General. But since the

W.D. desires, it may be done. If approved a draft statement of the case will be put up for approval.

/-
/5

A.S. As desired bu the P.W.D. the papers may be referred to the Adv. General for his opinion.

Id/- G.R.D.
dt/- 13/5/

A.L.R. Sd /- R.T.K.
dt/- 20/5/

R.L.A. ID/- P.M.L.
dt/- 20/5/

V.VK. 29/5/56/ 250.

Office of the R.L.A.

Statement of the Case.

The facts of the case are stated in the Statement of the case which was forwarded to the Advocate General in R.L.A.'s No. 13377, dated 24th December 1947.

In his opinion No. 12 dated the 9th February 1948 the Advocate General observed as follows :-

"Government promised to grant a license to Mr. B.D. Desai involving him in the purchase of plant and machinery. He also made the required deposit. All the formalities have apparently been gone through. (See page 229 of the file.) As Mr. Desai has now requested the grant of the license, I presume that he has acquired all the machinery, and he is in a position to work the licence. Government has exercised its discretion, and it seems to me that there is a valid contract now for the grant of the license for consideration i.e. purchase by Mr. Desai of the machinery and the payment of the deposit.

The subsequent discovery of Mr. Desai's unsuitabilit is, in my opinion, not material. There has been no breach of any condition of this particular license, and the fact theat Mr. Desai may have failed to carry out some condition of another license leads to no conclusion that he will not carry out the terms of this license. If Government now refuse, and in my opinion, they will la themselves open to a suit for damages. The discreation has been exercised and Mr. Desai has been made to act to his detriment on Government's promise, to the extent that he has spent money, probably a considerable sum, this being led to do so by Goverment gives him in my opinion a good cause for damages."

In this matter the P.W.D. observes as follows :

"The R.L.A. has opined that there appears no objecti to refusing Mr. Desai's application for Borsad licence. The Advocate General is however of the opinion that

that Government refusal would give Mr. Desai a good cause for damages on the grounds--

(a) that Mr. Desai has acquired all the machinery;

(b) that he is in a position to work the license;

(c) that he has spent a considerable sum relying on Government promise to grant him thelicense.

3. The Electrical Engineer was asked to collect necessary information with reference to (a), (b), and (c) in para. 2 above. He has now furnished copies of the correspondence between him and Mr. Desai from whichnit seems Mr. Desai has not acquired allthe machinery required for the purpose. The Electrical Engineer states that the information supplied by Mr. Desai is vague and in his opinion Mr. Desai must not have spent more than Rs. 2,000 including the license fee in connection with his application for Borsad License. The Electrical Engineer further opines that it is neither desirable nor will it be in the interest of thePublic at Borsad to grant an electric license for Borsad toMr. Desai who has proved himself to be incompetent to fulfil the obligations imposed upon him by the Indian Electricity Act, 1910.

Since Government in the P.W.D. desires that the Advocate General may be requested togive his revised opinion in the light of new facts papers are forwarded to him with a request to favour Government with his opinion in the matter.

Id/- P.M.L.
dt/- 26/5/48/

Remembrancer of Legal Affairs.

U.R. to the Advocate General, Bombay, No. 5021

Dated 27th May 1948.

V.VK. 29/5/56/ 5C.

No. 24 of 1948

Advocate General's Chambers,
High Court,
Bombay, 2nd June 1948.

U.O.R. to the Advocate General of Bombay,
No. 5021, dated the 27th of May 1948.

--OPINION.

I have seen the further information acquired after I gave my first opinion of the 9th of February 1948, from the letter of Mr. Desai at page 245 of the File, and from the letter at page 249 of the file, it appears that no machinery or hardly any machinery has been acquired (see item 2 at page 249), and Mr. Desai therefore, is not in a position to work the License . I had in my earlier opinion presumed, as he had applied for the License, he had acquired allthe machinery. Having regard to the further facts elicated , I think, Government would be justified in refusing to grant the License.

In any event, it appears reasonably clear that the damage, if any, sustained is comparatively small, and Government can take the risk of refusing ~~payment~~ to grant the License.

Sd/-
Advocate General .

V.VK. 20/6/50/ 50.

Office of the A.L.A.

Indian Electricity Act, 1910.

Grant of license

As desired by the Public Works Department the Advocate General was consulted again. A copy of his opinion No. 24 dated 2/6/1948/ is appended

Id/- P.M.L.
dt/- 8/6/

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 5427 , dated the 9th June 1948.

V.VK. 29/5/56/ SC.

Legal Department.
R.I.No. 2141 dated 24/2/48/

Submitted with reference to P.W.D.'s note dated 23/2 at page 7 ante.

2. The question raised for R.L.A.'s consideration is whether a Public Electy. Supply Undertaking whose supply has been controlled under the provisions of Bombay Electy. (Emergency Powers) Act, 1946, can be authorised to connect a temporaby or permanent load withouf the permissior of Government . And, if so, whether an excutive order issued by Government will serve the purpose. The Bombay Electric Supply and Transport Committ by its letter dated 30/12/47/ has requested the P.W.D. for general permission to connect :-

be connected

(2) Loads other than the domestic lighting upto a maximum of 8 K.W. to each individual consumer provided such load can be allowed on the distribution system.

(3) Temporary loads upto a maximum of 25 K.W. for a maximum of 10 days in each individual case.

VVK. 21/6.

or any otherperson of any

altertation to the licensee's works, the sanction of the Controlling Authority is not required under para 1(a) of the Revised Control Order of the Government of India Department of Labour dated 13- 4- 45. "This is mere elucidation of para (a) Government of India Department of Labour. Order No. D.W. 1 dated 13-4-46 which is continued in force under section 7 of the Bombay Electri city (Emergency Powers) Act, 1946. Theprovision

in clause 1(a) of the Order of the Government of India does not violate the provision in sec. 5(1)(i) of Act XX of 1946 in as much as no order has been issued by the Provincial Government in exercise of thepowe s conferred by the last mentioned section, so as to conflict with the a/m order of the Government of India. It is therefore open to the P.W.D. to inform the B.E.S.T. Committee that the position as stated in G.L. No. 1932705 -E.B. (II) dated 1-11-1945 remains the same .

Item (2)- As the Electrical Engineer is of opinion that there is no objection to connect the load stipulated under this item, it is for the P.W.D. to condiser whether extra load may be allowed. This, would not confliot with the provisions of sec. 5(1)(a)(i) of the Bombay Electricity (Emergency Powers) Act, 1946((XX of 1946).

Items (3). At present the B.E.S.T. Committee and other Cos. are permitted to connect temporary loads upto 10K.W. for a maximum of 10 days . This permission still stands , and as the Electrical Engineer to Government sees no objection to increasing such temporary loads, the P.W.D. is to free to permit 25 K.W. (instead of 10 K.W.) for temporary connections.

If it is decided to grant a general permission with regard to items (1) and (2) above, an executive order issued by the P.W.D. will serve the purpose. With regard to item (3), modification of G.L. No. 1932/38/-E e(II) dated 15/5/1946/ will be sufficient.

Id/-
dt/- 27/2/ (A.A.S.)

In his letter No. M.S.W. -17924 dated 2-1-1948, the General Manager, Bombay Electric Supply and Transport Committee states in view of thelarge number of requisitions for new or additional supply, it wo ld considerably facilitate the expeditious compliance with such requisitions if the B.E.S.T. Committee was given

General powers to connect -

(i) allload which can be safely connected throug h the existing meter service line anddistribution system, without the use of any additional materia

(b) loads,other than domestic lighting, upto a maximum of 5 K.W. to each individual consumer, provided V.V

Office of the R.L.A.

Bombay Electricity (Emergency Powers) Act, 1946. Section 5(1)

P.W.D. Order No. 3902/36, dated 30/9/1946/.

Clause (a) of para. 1 of the Revised Restriction Order dated 13/4/1945/(for supply of Electrical Energy) issued by the Government of India under rule 81(2) of the Defence of India Rules in the year 1945, provided :-

"Notwithstanding anything contained in the Indian Electricity Act, 1910, or in any licenses granted thereunder, or in any contract or a greement or in any requisition the company shall not except with permission granted under this Order --

(a) comply with theprovisions of any contract, agreement or requisition (whether or not existing at the commencement of this Order) for a supply (other than the resumption of supply) or in an increase in the supply, of electrical energy to any person, if the fulfilment thereof requires theprovision, by any person addtions to or alterations of works already installed."

"With reference to the above provisions, Government decided that "if an increase in thesupply of the electrical energy does not involve the provision by the licensee or any otherperson of any ad ition to or alteration to the licensee 's works, thesanction of Controlling Authority is not requird." The said decision of Government was communicated in P.W.D. letter No. 1932/38/EL.(II), dated 1/11/1945/ as amended by letter No. 1932-38- El. II dated 30,11,1945 to all the Electracal Licenses and Sanction Holders in the Province.

2. In supersession of the said Order dated 13/4/45, in exercise of power conferred by section 5(1) of the

Bombay Electricity (Emergency Powers) Act, 1946 Government issued another order on 30/9/1946/ which provides that notwithstanding anything contained in the Indian Electricity Act, 1910 , or in any license granted thereuner ~~[illegible]~~.... or in any contract or agreement or in any requisition, th e .....

(1) shall not comply, except with the permission of the Provincial Government , with --

(a) the provisions of any contract, agreement or requisition (whether made beforeor after the commencement of thesaid Bombay Electricity (Emergency Powe s) Act, 1946 , for the supply (other than the resumption of a supply) or an increas in the supply of electrical energy to any person ; erc.

It is important to note that the words "if the fullfilment thereof requires the provision , by abt person (whomsoever) of any wouks not already installed or additions and alterations of works already installed e in clause 1(a) of the Order dated 13/4/1945 are deleted from the Order dated 30/9/1946/. Consequently, thedecision of the Bentaal Electric Power Control Board communicated to the B.E.S.T. will no longer be applicable andexcept in the case of resumption of a supply, sanction of the Provincial Government willbe necessary for the supply or increase in the sup ly of electrical energy to any person even though no additional work is involved.

Id/- P.M.L.
dt/- P.M.L.

Remembrancer of Legal Affairs.

U.R. to P.W.D. ,No. 5307 , dated the 4th June 1948,

V. VK. 29/5/56/ 5C.

Submitted.

2. Please see R.L.A.'s opinion No. 385 dated 13/1/1948. As advised therein the P.W.D. has decided to refer the matter of compensation to be paid by the Dakor Umreth Electric Licensee for damage done by ariel lines, to arbitration, and the Civil Judge, Umreth was nominated as the arbitrator. The High Court however ~~xxxx~~ took objection to the appointment of the Civil Judge, Umreth as arbitrator on the ground that it is a not a salutory principle to allow Civil Judges as arbitrators. The P.W.D. now proposes to appoint the Electrical Engr. to Govt. as arbitrator in the matter but before the appointment is made, the papers are shown to the R.L.A. for advice.

3. Section 52 of theIndian Electricity Act provides:

> "Where any matter is by or under this Act directed to be determined by arbitration the matter shall unless it is other wise expressly provided in the license of a licensee, be determined by such person or persons as thelocal Govt. may nominate in that behalf on the application of ieihter party but in all other respect the arbitration shall be subject to the provisions of theIndian Arbitration Act, 1899".

The Provincial Govt. has wide powers (in cases where they have) to appoint arbitrators and as such can appoint any person including a Civil Judge as an arbitrator. Where a statute authorised the parties to nominate their own arbitrators it has been held that the judges of the Court can be so nominated (Parbati Kuer v. Rai Kuntha Nath, 4 A.I.J.R. 89 and also Re Durban County Permanent Building Society). But since arbitration involves more of equitable principles than law proper the High Court presumably considers tthat on healthy grounds civil judges be nut appointed as arbitrators lest they might lean towards equity. There would be no objection in accepting the High Courts recommendations and appointing the Electrical Engr. as arbitrator as now proposed by the P.W.D. The papers may be "seen and returned".

Sd/- T.Y.Chaudhari
dt/- 20/ 5

In R.L.A.'s opinion No. 385, dated 13-1-48, the P.W.D. as advided that as the licensee failed to comply with the provisions of sec. 18(1), he would be liable to

pay
pay-full-compensation for-any-loss-or-damage-incurred by reason therof, and where any difference or dispute arises as to the amount of such compensation, the matter shallbe determined by arbitration. It was also pointed out that the prospective damage to the trees by preventing their growth or otherwise may naturally be included in the claim for compensation which will be made the subject-matter of arbitration.

In pursuance of ~~hhs~~ the said opinion, Government in P.W.D. requested the D.J.Naira, to suggest the name of one of his assistants for appointment as an arbitrator to determine thedispute. The D .J.Nadiad suggested the name of Mr. Hakim, Civil Judge (Jr.Division ¼ for appointment as arbitrator. Their Lordships, however, took strong objection to appointment of Mr. Hakim as arbitrator on tho ground that "it is not a salutary principle to allow Civil Judges toact as arbitrators". In view of the protest of theH.C. it is now proposed to appoint the Electrical Engineer to Government as arbitrator in consultatio with R.L.A.

Under section 13(2) of the Indian Electricity Act, where the licensee makes default in complying with any of these provisions, he shall make full compensatio for any loss or damage incurred by reason thereof and where any difference or dispute arises as to the amount of such compensation, the matter shall be ~~xxxx~~ determined arbitration. Section 52 provides that where any matter is, by or under this Act, directed to be determined by arbitration, the matter shall, unlessit is other wise expressly provided in the license of thelicensee, be determined ~~xxxxxxxxxxx~~ by such perosn or persons as theProvincial Government may nominate in-that behalf on the application of either party. This section gives discreation to the Provincial Government to appoint such person as it deems proper to determine the dispute. There appears, therefore, no objection to appointing the Electoral Engineer to Government as arbitrator in the case in question .

V.VK 29/5/56/ 5C,

Reply may be:

"Seen and returned .

There is no objection to appointing the Electrical Engineer to Government as arbitrator in this case under section 52 of the Indian Electricity Act."

Id/- G.R.D.
dt/- 8/6/

A.L.H. Id/- R.T.K.
dt/- 9/6/

R.L.A. Id/- P.M.L.
dt/- 9/6/

U.H. to P.W.D. No. 5497 dt. 12-6-1943.

V.VK' 29/5/53/ SC.

Whether general permission can be granted to licensees under P.W.D. Order No. 3902/36 dated 30/9/1946.

The question for R.L.A.'s consideration is whether Government can grant a general permission authorising the B.E.S.T. Company to connect loads not involving use of additional materials.

The P.W.D. Order No. 3902/36, dated 30-9-1946 issued by Government under section 5(1) of the Bombay Electricity (Emergency Powers) Act, 1946, is worded on the lines of clauses (a) and (b) of section 5(1) of the said Act. Under clause (a) of para. (1) of the said Order, Notwithstanding anything contained in the Indian Electricity Act, 1910, or in any license granted thereunder, or in any contract or agreement or in any requisition, the licensee shall not comply, except with the permission of the Provincial Government with the demand

(i) for the supply (other than the resumption of a supply) or electrical energy, or

(ii) for an increase in the supply of electrical energy to any person.

Sub-section (2) of section 5 of the Bombay Electricity (Emergency Powers) Act, 1946, provides that to obtain any permission required under sub-section (1), the licensee shall make an application to the Provincial Government in such form as the Provincial Government may notify in the Official Gazette in this behalf. Under sub-section (3), on an application being made under sub-section (2), the Provincial Government may either refuse the permission sought for or grant it either absolutely or subject to such conditions as it may think fit to impose, and may also call for such further particulars relating to the application as it may require. The words "any permission" in sub-section (2) of section 5 appear to mean "each and every" permission. The words "for the supply or an increase in the supply of electrical energy to any person" read with subsection (2) and (3) of section 5 appear to

convey that in respect of each requisition for the supply or an increase of supply of electrical energye the licensee should make an application to the Provincial Government for obtaining the permission of Government and after taking into consideration the particulars relating to each such applications, Government may either refuse the permission or ~~gxxx~~ grant it absolutely or subject to conditions as it may think fit to impose. It will be clear that the provisions of section 5 do not contemplate grant of a general permission to the licensee.

Id/- P.M.L.
dt/- 23/8

Remembrancer of Legal Aff___

U.R. to P.W.D. Np. 8023

dated the 23rd August 1946.

V.VK. 29/5/56/ SC.

Submitted.

3. Please see notes underlying opinion No. 1954 dated the 27th February 1948.

The Electrical Engineer to Government is of the view that the amendment proposed to clause 6 of the agreement executed by the Ahmedabad Electricity Company with the consumers by reducing the period of supply from three years to six months would not be in order in view of the provision of thefirst proviso, sub-head (a) to clause VI of the Schedule to the Indian Electricity Act. The R.L.A. agreed with this view. The Company now states that the period of 2 years mentioned in clause VI (I) (a) of the Schedule is permissible and not mandatory and if thecircumstances allow a licensee to prescribe a shorther period of contract/is not to prevent him from accepting such shorter contract period. The Electrical Engineer states that thefixation of theperiod of contract is not left to the discretion of a licensee and that the proposed reduction in the period of sup ply would be detrimental to the inter est of the consumers as in that case the continuance or discontinuance of supply to them will alsays be subject to the sweet will of the Company . The R.L.A. isrequested to see the representation of the Company.

3. The question raised by the Company was fully considered in the office notedated 10-2-1948 before the R.L.A. gave the opinion No. 1954 , dated 27/2 /1948/ , Under the first proviso (a) to clause VI of the Schedule to the Indian Electricity Act,

1930 the consumer has to enter into an agreement with the licensee in a form approved by the Government . The licensee's undertaking being for public benefit a duty is imposed on the licensee to supply energy to any person who wants to take a supply of energy, subject to certain conditions laid down either in the Act or in the Schedule which is incorrpotated in the license and subject to any addition or modification which the Provincial Government may make, His right with the consumers evern thought they are regulated by contract are subject to these restrictions. The view taken by the Ahmedabad Electric Company that the period of two years mentioned in the first proviso (a) toclause VI(i) of the Schedule is permissible and not mandatory is not correct. Government may agree to the reduction of the period from 3 years to 2 years, but not to 6 months because this would be inconsistent with the conditio s stated in the license (see sec. 21(2)). There appears therefore no ground for modifying R3L3A3 opinion No. 1954 , dated 27 -2 -1948.

Sd/- P.B. Nadkarni
dt/- 13/8/

A.L.R.I agree . A - A of Mr. Nadkarni note may be the reply

Id/- R.T.K.
dt/- 20/8/

R.L.A. Id/-P.M.L.
dt/- 20/8/.

U.R. to P.W.D. No. , 7993 , dated the 23rd August 1948 .

V.VK. 29/5/56/ 5C.

Office of theR.L.A.

The view taken by the Ahmedbad Electric Company that the period of two years mentioned in the first proviso (a) to clause VI(1) of the Sche-dule is permissive and not mandator is not correct. Government may agree to the reduction of the period from 3 years t 2 years, but not to 6 months becquse this would be inconsistent with the conditions stated in the license (see section 21(2) . There appears therefore no ground for modifying R.L.A.'s opinion No. 1984 , dated 27-2 February 1948.

Id/- P.M.L.
dt/-21/8/

U.R. to P.W.D. No. 7993 , dated the 23rd August 1948.

V.VK. 29/5/56/ 50.

Office of the R.L.A.

Conditions of supply made under sect. 21(2) of the Indian Electricity Act, 1910.

Rule 70 of the Indian Electricity, Rules, 1937.

G.R. P.W.D. No. 9872/27, dated 5th May 1938.

One of the conditions approved by Government under section 21(2) of the Indian Electricity Act, 1910, as per G.R. P.W.D. No. 9872/27 dated the 5th May 1936 is "one hundred feet of service line from the distributing main, but not on the property for which a requisiton for the supply of energy is received, shallbe laid free of charge. Charges for the rest of the service shall be recoveed at the actual cost plus fifteen per cent. to cover overhead charges". (See Part II of theconditio s accompanying the aforesaid G.R.). It is considered that the levy of 15 per cent. overhead charges gives the licensee a chance to profiteer and as such it is unjust. Consequently, the P.W.D. proposes in its note dated the 19th November 1947 to amend the condition to the effect that thecharges for the rest of the service line shall berecovered at the actual cost of materials and labour plus 15 per cent. on labour only to cover supervision charges. The Electrical Engineer to Government has taken objection to this proposal on the ground that section 21(3) of the Indian Electricity Act gives power tocancel any condition or part of a condition previously sanctioned under sub-section (2) and does not give power to Government to amend any condition. The R.LA. is requested to advise.

2. Under Clause VI of the Schedule to the Indian Electricity Act, 1910, where ..... a requisition is made by the owner or occupier of any premises situate within the area of supply

requiring the licensee to supply energy for such premises, the licensee shall, within one month etc. supply and ..... continue to supply energy in accordance with the requisition. Sub-clause (b) of the proviso to this clause, however, provides that the licensee shall not be bound to comply with any such requisition unless and until the person making, if required by the licensee so to do, pays to the licensee the cost of so much of any service line as may be laid down or placed for the purposes of the supply upon the property in respect of which the requisition is made, and of so much of any service line as it may be necessary for the said purposes to lay down or place beyond one hundred feet from the licensee's distributing main, althought not on that property. it follows, therefor that the person making the requisition cannot be called upon to pay more than the cost of the service line beyond one hundred feet from the licensee's distributing main. Section 21(2) of the Indian Electricity Act, 1910 requires that the condition should not be inconsistent with the Act or with the licence or with any rules made under the Act. The condition authorises the recovery of the actual cost plus 15 per cent. to cover overhead charges. It is not quite clear what items were intended to be included in the expression "actual cost". The Model From of Lecensee's Conditions given at p-. 408 of Meares' Law Relating to Electrical Energy in India and Byrne says that the licensee shall be entitled to charge the consumer the actual cost of materials and labour involved plus 15 per cent. subject to the provisions of Clause VI(1) of the Schedule to the Act, first roviso, sub-head (a). Attention may also be invited to Rule 70 of the Indian Electricity Rules, 1937, where the actual cost of an alteration is deemed to include the cost of the materials and

the wages of labour and supervision charged xxx to the extent 15 percent. upon the wages of labour only. The condition in Part II appended toG.R. P.W D. No. 9872/27B dated 5-5-1936, , does not specify thecomponent elements of "actual cost" and at the same time allows 15 per cent. uponthe actual cost. It may, therefore, be permissible for a licensee to include in the actual cost supervision charges and yet charge a 15 per cent. to cover overhead charges on the actual cost so calculated. In the absence of any definition of what "actual cost " is supposed to be, toacoow 15 xxper cent. upon the actual cost is to demand from thexperson making the requisition something more than what the law authorises the licensee to recover from him. Under clause VI of the Schedule, so long as the person pays the actual cost, the licensee is under a legal obligation to supply energy to him,which means that the licensee cannot demand anythin more than the actual cost from Him. To the extent, xxx that the licensee is enabled to demand something more than the actual cost, t e condition would be inconsistent with sub-clause (b) of the proviso to clause VI of the Schedule which is part of the Act and I feel that, on that ground, that condition, as it is worded now, is ultra vires.

3. Apparently, the intention underlying the conditon w to chirge 15 per cent.on the aggregate of thecost of materials and thecost of albour. Ver in that respect it may be pointed out that there is no justification for adding 15 per cent. to the cost of thematerial. The overhead charges have no reference to the materials supplied. It is equitable that the licensee should get overhead charges by way of superivion upon the cost of labo r. hat is precisely what is provided for in Rule 70 quoted above. Therefor, the proper condition in such cases would be to

would be substantially construed as altering or amending condition and that would fall not under sub_section (3) but under sub-section (2) which leaves theinitiative with the licensee. Presumably the licensees would not be prepared themselves to suggest the alteration which the P.W.D.has in view. Therefore , the

allow the licensee 15 per cent. by way of supervision charges upon thewages of labour following the model of Rule 70. The Model Form given on page 406 of Meares quoted before need bot be foooowed to that extent .

4. The next point for consideration is how such alteration in the condition can now be brought about. Under section 21(3) the Provincial Government may cancel any condition or part of a condition previously sanctioned under sub-section (2) after giving to the licensee not less than one month's notice in writing of its intention so to do. The power under sub-section (3) is that of cancellation as rightly pointed out by the Electrical Engineer to the Government of Bombay. Inasmuch as the expression " actual cost " has not been defined to alter the condition so as to provide that the charges shall be recovered at the actual cost of materials and labour plus 15 per cent. of labour only to cover supervision charges would not amount to a cancellation even of ap part of the condition, for there is no distinct and severable part to -day ~~xhichhxxatxxmxxmtxtoxaxcanxallxixxxxxxx afxaxpartxxfxthax~~ which sepaks of cost of materials. To effect a change in the manner suggested by the P.W.D. ~~has in view. Therefore, the~~ proper cousse would be for Government to cancel that part of the condition viz."The charges for the rest of the service line will be recovered at the actual cost plus fifteen per cent to cover overhead charges," Such cancelllation would then lead to this result, that the licensee would be able to recover the actual cost in terms of sub-clause (b) of the proviso to clause VI of the1 Schedule and in case of dispute

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as to what is theactual cost, a reference would have to be made to the Electrical Inspector under sub-clause (3) of the clause. It may be brought to the notice of the licensees that this would mean frequent references and absence of uniform standard and that, therefor, it may be to their interest to evolve a uniform condition which will provide for the recovery of ----

(i) cost of materials,

(ii) wages of labour, plus

(iii) supervision charges to the extent of 15 per cent. of items (ii)

I would, therefore, advice that Government should cancel the latter part of thecondition as suggested above and then, in consultation with the licensees, evolve a new condition on the lines indicated above.

Id/- P.M.L.
dt/- 26/8/

Remembrancer of Legal Affairs

U.R. to P.W.D. No. 8239 , dated the August 1948.

V.VK. 29/5/66/ 5C,

Office of the R.L.A.

It appears that Government has decided to revoke the license granted to Dakore-Umreth Electric Company, Limited, under section 4 and to purchase the undertaking under clause (d) of section 5 of the Indian Electicity Act, 1910. P.W.D. in para. 4 of its office note at page 247 ante observes:

> "There is no difficulty in taking possession of the undertaking by Government at Dakor-Umreth immediately after the revocation of the license for continuing the supply even though its purchase price is not settled. But Government cannot sell the undertaking to the Municipalities as noted above till the purchase of the undertaking between the licensee and Government is complete."

In his minute at page 248, H.M. (P.W.D.) observes: "The Municipality is keen on running the powerhouse. Could not Government appoint the Municipalities as its agent to run the place?" P.W.D. considers that in view of the provisions of section 7-A of the Indian Electricity Act, 1910, as inserted by section 3 of the Indian Electricity (Bombay Amendment) Act, 1946, 'it seems doubtful whether Government fan appoint the Municipality as its agent to take possession of and run the undertaking, pending comple ion of the purchase of the undertaking. The R.L.A. is requested to advise.

Sub-section (1) of section 7-A of the Indian Electricity Act, 1910, as inserted by Bombay Act XVIII of 1946, provides:

> "Notwithstanding anything contained in any law for the time being in force, the Provincial Government may-
> (a) when it elects under clause (d) of section 5 to purchase an undertaking, or
> (b) if it elects under sub-section (2) of section to purchase an undertaking, on the expiry of the period of notice required to be given under sub-section (4) thereof
>
> pending the purchase of the undertaking, at any time by order require the licensee to deliver possession of such undertaking to such officer as the Provincial Government may appoint in that behalf on or before such day as may be specified in the order, and the licensee shall comply with such order. On failure of the licensee to comply with such order, the Provincial Government may forthwith enter into possession of such undertaking".

Sub-section (2) enacts

> "On thedate of compliance with theorder, or the day specified therein whichever is earlier, the provisions of clause (e) of section 5 or sub-section (3) of section 7, as the case may be , shall, without prejudice to the right of the licensee to payment of thevalue of the undertaking, apply to such undertaking as if the purchase had been effected . "

Clause (e) of section 5 and sub-section (3) of section 7 are similarly worded. Sub-section (3) of section 7 provides :

> "Where a purchase has beeneffected under sub-section (1) or sub-section (2) ,-
>
> (a) the undertaming shall vest in thepurchasers free from any debts, mortgages or similar obligations of thelicensee or attaching to the undertaking :
>
> Provided that ay such debts, morgages or similar obligations shall attach to the purchase- money in substitution for the undertaking. and
>
> (b) save as aforesaid, thelicense shallremain in full force, and the purchaser shall be deemed to be thelicensee :
>
> Provided that where the Provincial Government elects to purchase under sub-section (2). thelicense shall, after purchase, in so far as the Provincial Government is concerned, cease to have any further operation ."

Reading these provisions together it would be clear that pending thecompletion of the sale of the undertaking, Government canrequire thelicensee to deliver possession of theundertaking to such officer as the Provincial Government may appoint in that behalf on or before such day as may be specified in theorder, and on thedate of compliance with theorder or the day specified therein whichever is earlier, the undertaking shal l vese in Government free from any debts etc. even though the sale is not complete and the sale price of the undertaking has not been settled. Consequently, the view taken by P.W.D. in para. 4 of its office noteat page 247 ante that pending thecompletion of sale Government cannot sell theundertaking to the Municipalities is not correct . The Municipalites.

cannot however be appointed to take possession of the undertaking under section 7-A(b) as they are not officers of Government.

On the dated of the compliance with the direction or the expiry of thetime specified in theorder issued under Slause (b) of sub-section (1) of section 7-A whichever is earlier theundertaking shall vest in Government. It would therefor e be competent for Government to sell the undertaking to the Dakor-Umreth Municipalities after the undertaking has vested in Government. If Government does not wish to sell the undertaking to the two Municipalities , it would be equally competent to appoint them as its agents to run the undertaking, for , the supply of electricity to the residents for consumption and for lighting in public streets would be one of the functions of theMunicipalities (see section 54(1)(a) and clause (1) of section 56 of the Bombay District Municipal Act, 1901). In either case, these Municipalities cannot run the concern either without a license being issued under section 4 or sanction under section 28 for, onethe purchase of the undertaking by Government the license issued ot the Dakor-Umreth operation (see clause (e)(ii) pf sectipn 5 and clause (b) of section 7(3) of the Indian Electricity Act). If it be found inconvenient to wait until a license is issued to the Municipalities under section 4, it would be open to Government to resort to section 28(1) and allow them to supply energy in accordingance with such conditions as the Government may fix in this behalf.

Id/-P.M.L.
dt/- 6/11

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 10441 dated the 6th November 1948.

V.VK. 30/6/56/ 5C.